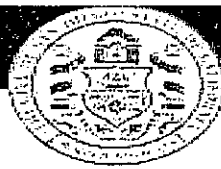


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THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 11, 2007 REPORT NO.: 07-118
ATTENTION: Council President and City Council
Docket of July 17, 2007
SUBJECT: HILLSIDE DRIVE RESIDENCE – EASEMENT AGREEMENT:
PROJECT NO. 87275. COUNCIL DISTRICT ONE. PROCESS 5.

REFERENCE: Hillside Drive Residence, Coastal Development Permit and Hillside Review Permit, Project No. 37375, Approved by City Council on November 3, 2005.

REQUESTED ACTION: Should the City Council approve an Easement Agreement for the installation of a Tie Back anchor system, with a portion of the Tiebacks located within adjacent dedicated City Park Land, for the foundation of a single-family residence?

STAFF RECOMMENDATION: APPROVE the Easement Agreement for the installation, maintenance and repair of the proposed Tieback anchor system associated with the development of the Hillside Drive Residence, Coastal Development Permit and Hillside Review Permit, Project No. 37375.

SUMMARY:

This is a request for approval of an Easement Agreement for the installation, maintenance and repair of a proposed tie back anchor system for the foundation of a single-family residence, with a portion of the tie back anchor system to be located within adjacent dedicated City Park Land. This single-family home was previously approved by City Council through Coastal Development Permit and Hillside Review Permit, Project No. 37375.

Planning Commission Recommendation – On April 8, 1999, the Planning Commission denied an appeal and approved the subject project by a vote of 6 to 0, with one additional condition. A condition requiring the applicant to enter into a Hold Harmless Agreement with the City was added to the permit due to potential geologic hazards of the site.

Background:

The Coastal Development Permit and Hillside Review Permit, Project No. 37375, was approved on appeal by City Council on October 5, 2004, by Resolution No. 299734. The project has been in for review of the ministerial grading and building plans over the past year and a half, during which time it was discovered that the proposed tie-back system for the foundation crossed over into City Park Land. The applicant approached the Park and Recreation Department for a Right of Entry Permit, which was denied on the bases of a request for private use of dedicated park land (Council Policy 700-06 Encroachments on City Property). The proposed Easement Agreement was drafted to create an agreement

which would allow the applicant to encroach approximately 0.429 acres onto city dedicated park land and construct their tie-back foundation system. The subject tiebacks would be drilled in a manner so that no visual or functional aspect of the city's property would be disrupted. All of the entry holes for drilling for the tiebacks will occur or originate within the building footprint of the proposed house. Those tiebacks would be between 20-60 feet underground at the beginning of the encroachment on City land. The tiebacks would be undetectable above ground.

The project site is a vacant 3.8 acre, flag shaped, single family lot, located at 7674 Hillside Drive (Attachment 1 & 3). The subject property has developed lots to the north and east with an established residential neighborhood of large custom homes, with vacant open space and dedicated park land to the south and west. The project site contains steep slopes with sensitive vegetation over approximately 98 percent of the property. The project site is also constrained with a geologic hazard, an ancient landslide underlies the site, a ravine traverses the site carrying the natural drainage and heavy brush dominates a majority of the property that is a potential fire hazard. The site is currently zoned RS-1-8 for the main portion of the lot and RS-1-12 for the narrow access portion. The project site is located within the Multi-Habitat Planning Area (MHPA) boundaries of the City of San Diego Multiple Species Conservation Program (MSCP) Subarea Plan. The La Jolla Community Plan designates the site for Open Space and Parks land use, which allows for low density residential development, in conformance with the R1-40,000 Zone (the Zone of the property at the time the permit application was deemed complete) development regulations.

Project Description:

This project proposes a tie-back system, to retain an ancient landslide area, for a three-story, 9,840 square-foot single family residence with an attached garage and patio/pool, all designed to comply with the R1-40,000 Zone development regulations (Attachment 4). The proposed residential structure utilizes an embedded design which fits the structure into the natural topography and minimizes the amount of grading outside the building footprint consistent with the recommended design methods from the Hillside Review Design Guidelines. The constraints of the property were analyzed through a slope analysis along with information regarding the geologic hazards, fire hazards, and sensitive biological resources. The proposed location of the residence was determined to be the most developable portion of the property, based on all the analyzed constraints.

Community Plan Analysis:

The project application was submitted in 1997 and is subject to the 1975 La Jolla Community Plan (LJCP) and La Jolla – La Jolla Shores Local Coastal Program. The subject property is designated as Open Space and Parks land use, which allows for low density residential development, in conformance with the R1-40,000 Zone development regulations.

The proposed single-family home project conforms with the policies of the La Jolla Community Plan. The property is located outside of any Public Vantage Point identified in

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the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed development in no way impacts public vantage points and the proposed project is consistent with the scale of adjacent development. The existing development in the area is varied in scale, character and contains predominately single-family residential uses. The project is therefore compatible with the surrounding neighborhood.

Environmental Analysis:

The City of San Diego as Lead Agency under CEQA has reviewed and considered a Mitigated Negative Declaration, LDR File No. 96-7549, dated January 23, 1999, covering this activity. Adopted June 29, 1999, by Resolution No. R-291885.

Project-Related Issues:

At the time that the City Council approved Coastal Development Permit and Hillside Review Permit, Project No. 37375, the Geotechnical Report provided two different foundation options that would meet the geology requirements. It included both the proposed tieback system and a caisson system. Due to a substantial difference in cost, the applicant is requesting the use of the tie-back system over the caisson system. However, the Parks and Recreation Department of the City supports the caisson system in order to avoid any private encroachment onto City dedicated Park Land, which is also Pueblo Lands subject to Charter Section 219, and to avoid a precedence being set by allowing the encroachment. Over all City Staff supports the proposal based primarily on the City Geologist's belief that the proposed tie-back retaining system is considered a superior construction method and the belief that this system will offer some benefit to the City by stabilizing a portion of potentially unstable slope located on City property.

FISCAL CONSIDERATIONS: All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

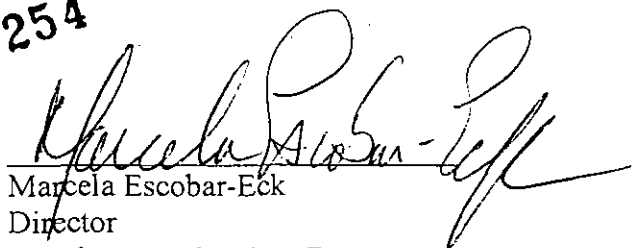
PREVIOUS COUNCIL and/or COMMITTEE ACTION: The Coastal Development Permit and Hillside Review Permit, Project No. 37375, was approved on appeal by City Council on October 5, 2004, by Resolution No. 299734.

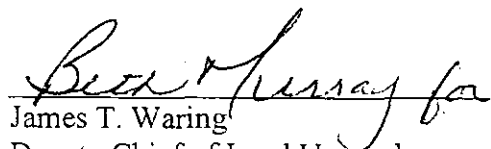
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The La Jolla Community Planning Association voted 10-0-0 to recommend approval of the proposed project at their meeting of July 10, 1997.

KEY STAKEHOLDERS (& Projected Impacts if applicable):

Matthew C. DiNofia, Managing Partner of La Jolla Development Group LLC

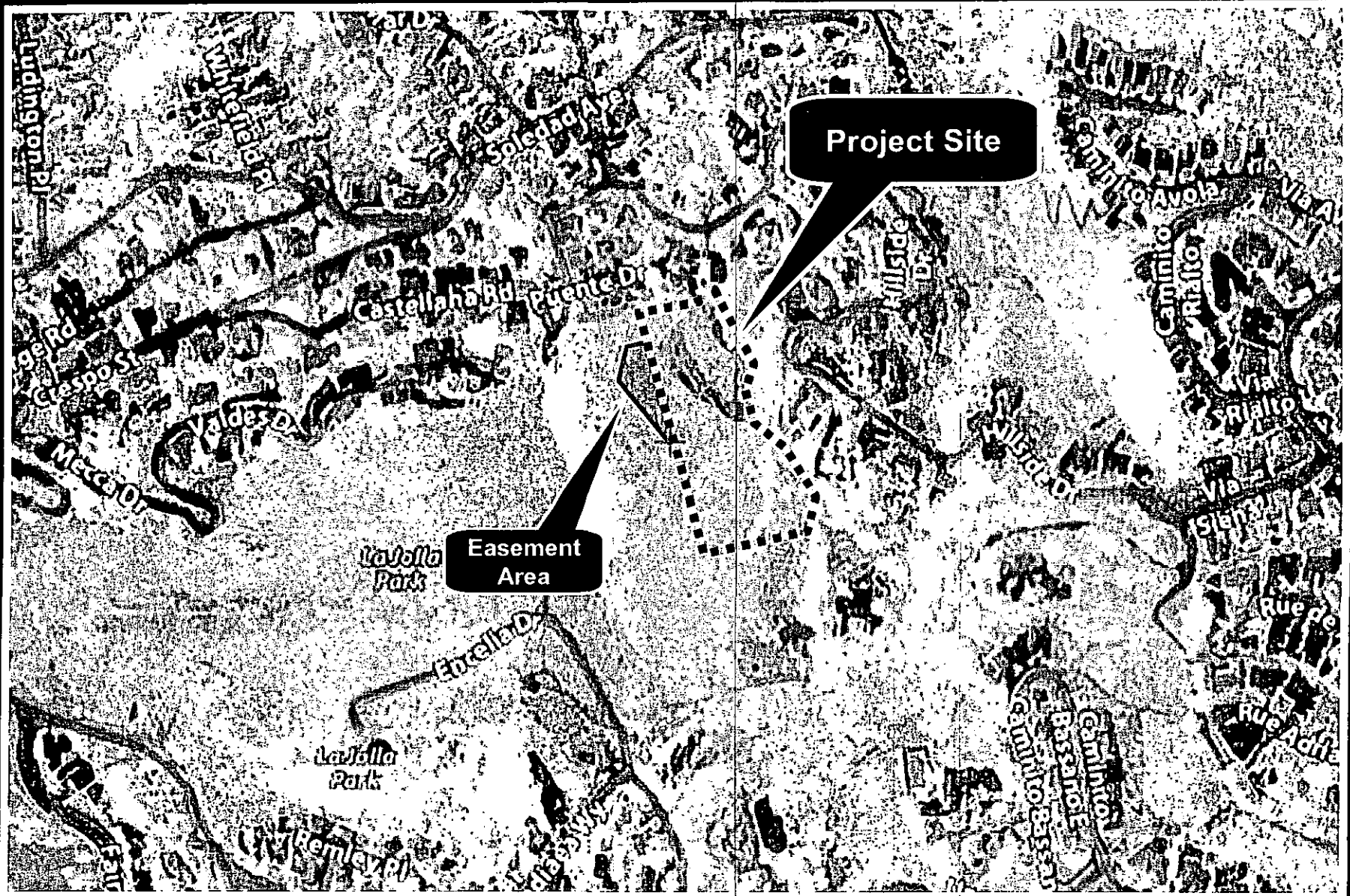
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Marcela Escobar-Eck
Director
Development Services Department


James T. Waring
Deputy Chief of Land Use and
Economic Development

ATTACHMENTS:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Site Plan
5. Easement Plot Plan
6. Project Cross Sections of Tiebacks
7. Draft Easement Agreement



Aerial Photo

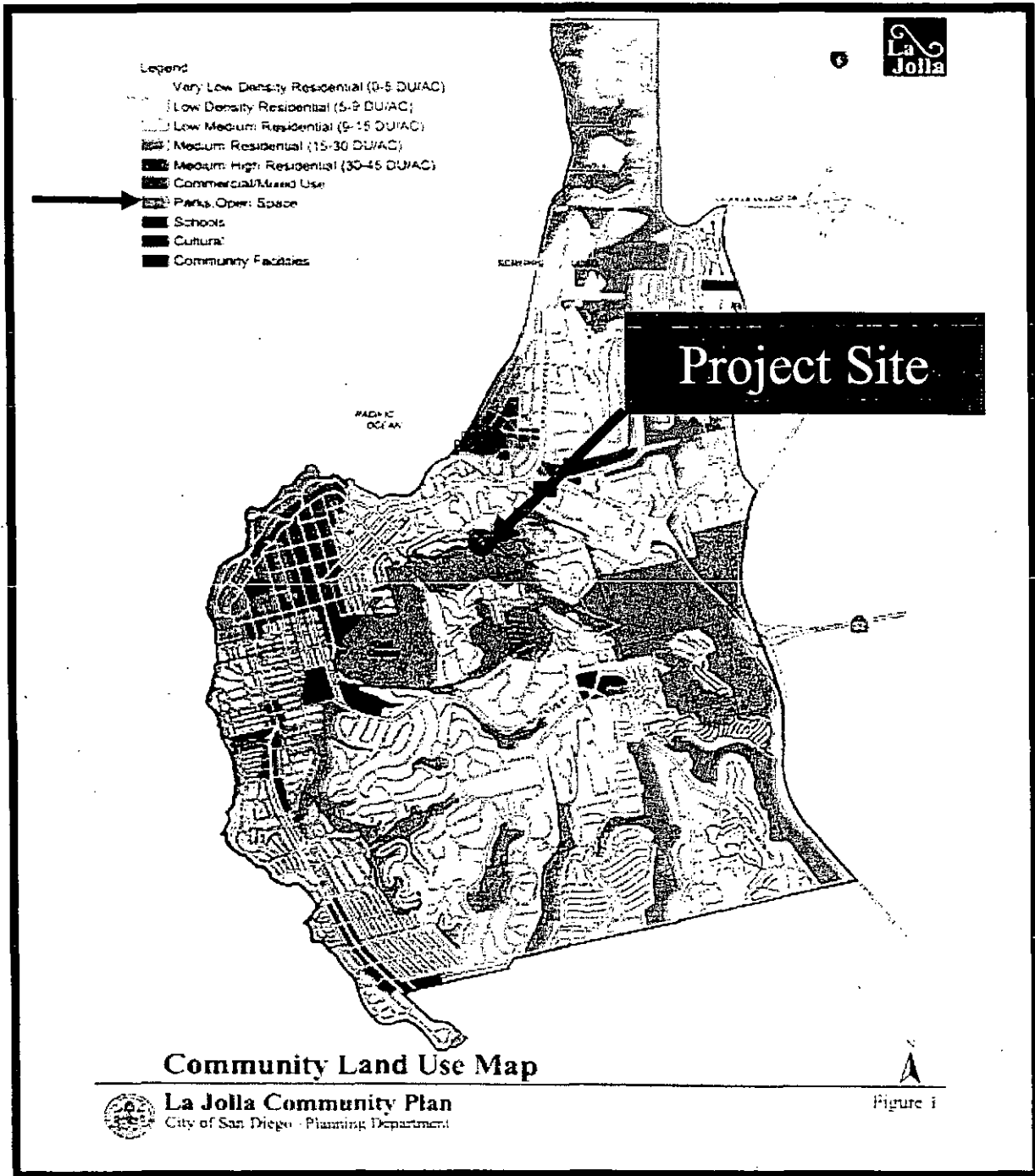
HILLSIDE DRIVE RESIDENCE – PROJECT NO. 87275

7674 Hillside Drive



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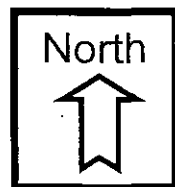
ATTACHMENT 2

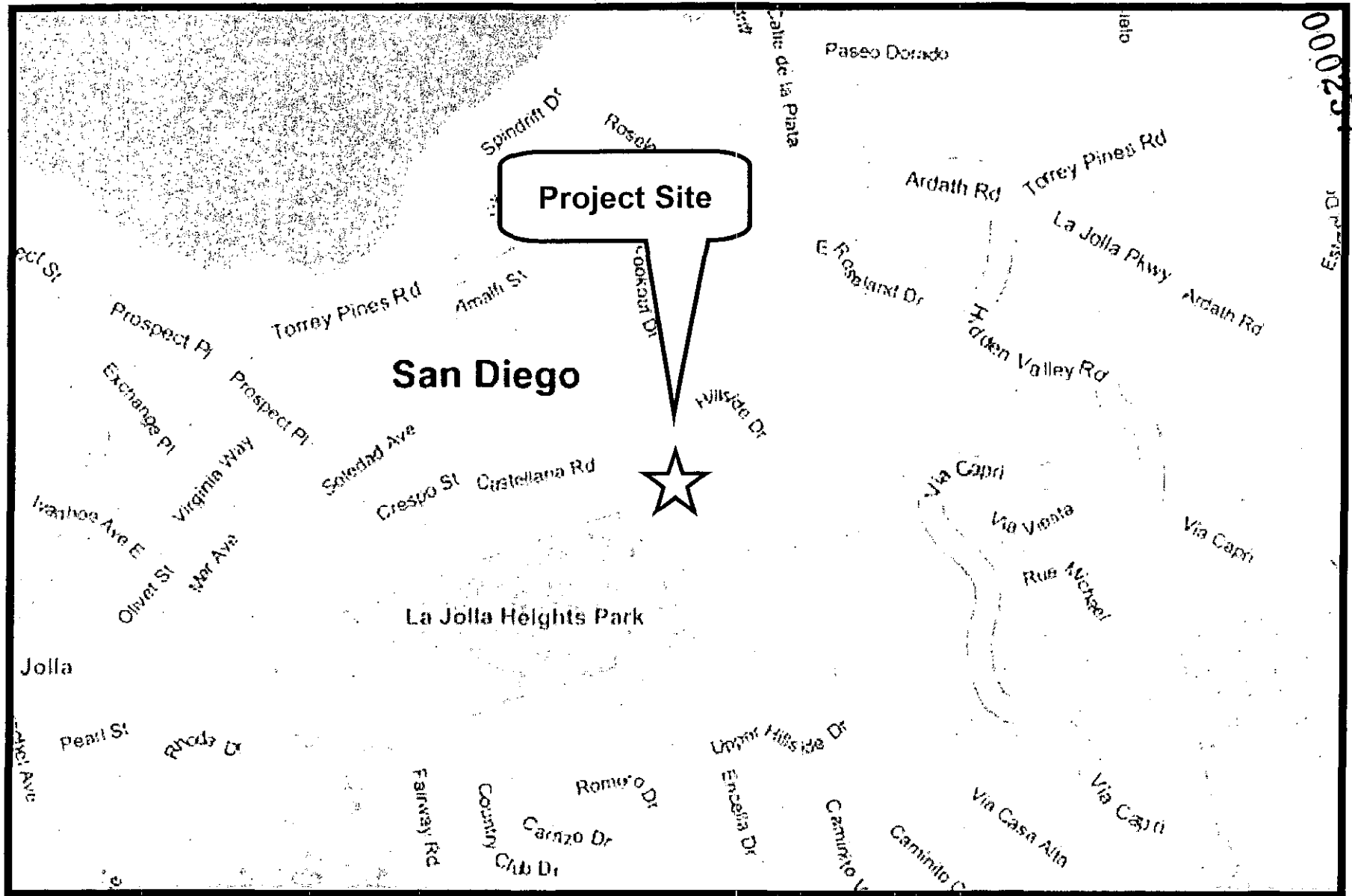


Community Plan Land Use Map

Hillside Drive Residence

Project No. 87275





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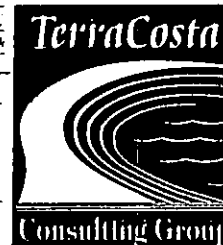
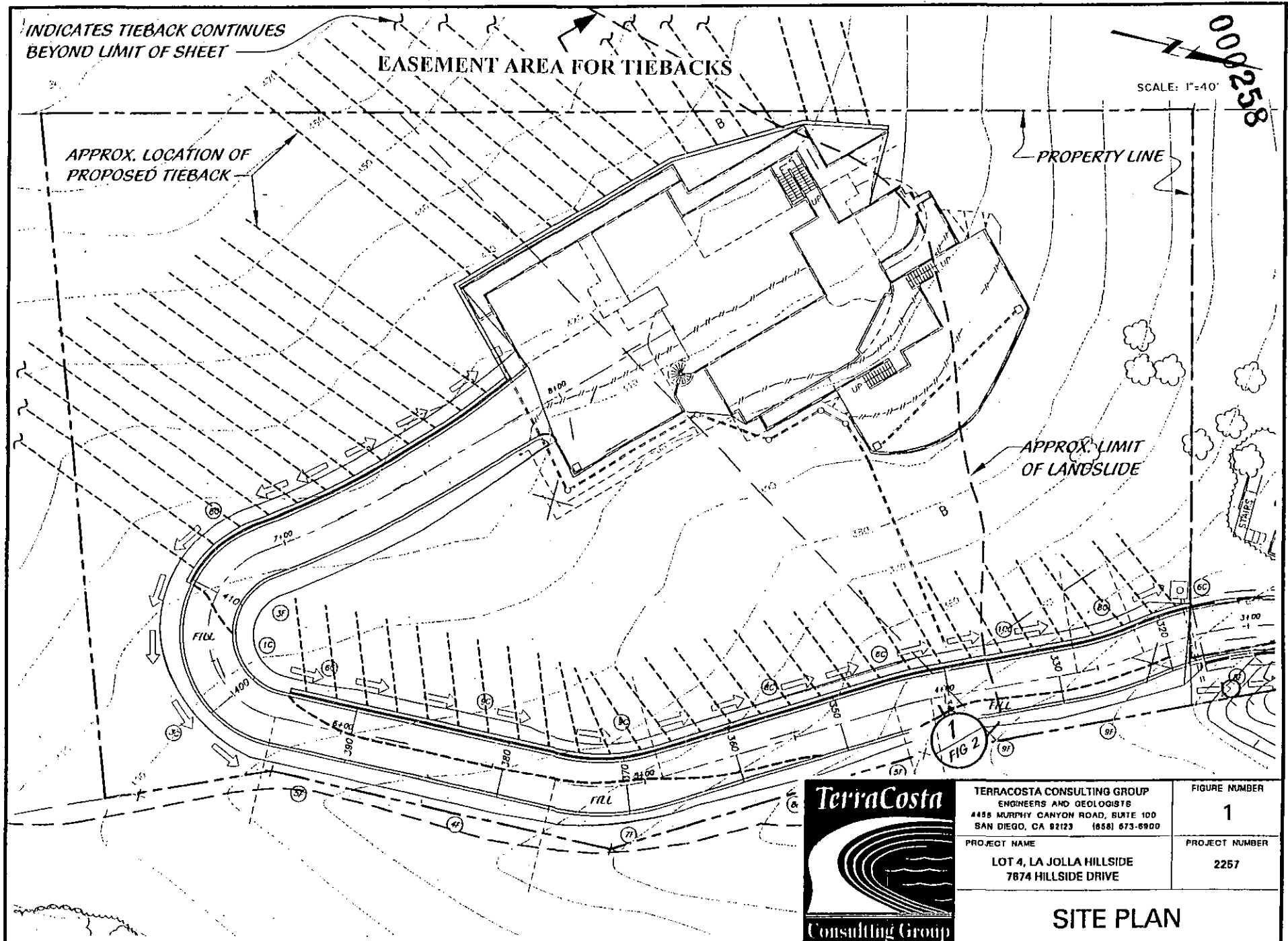


Project Location Map

HILLSIDE DRIVE RESIDENCE – PROJECT NO. 87275

7674 Hillside Drive





TERRACOSTA CONSULTING GROUP
ENGINEERS AND GEOLOGISTS
4485 MURPHY CANYON ROAD, SUITE 100
SAN DIEGO, CA 92123 (658) 673-6900

PROJECT NAME
LOT 4, LA JOLLA HILLSIDE
7874 HILLSIDE DRIVE

FIGURE NUMBER
1

PROJECT NUMBER
2257

SITE PLAN

EXHIBIT "B"

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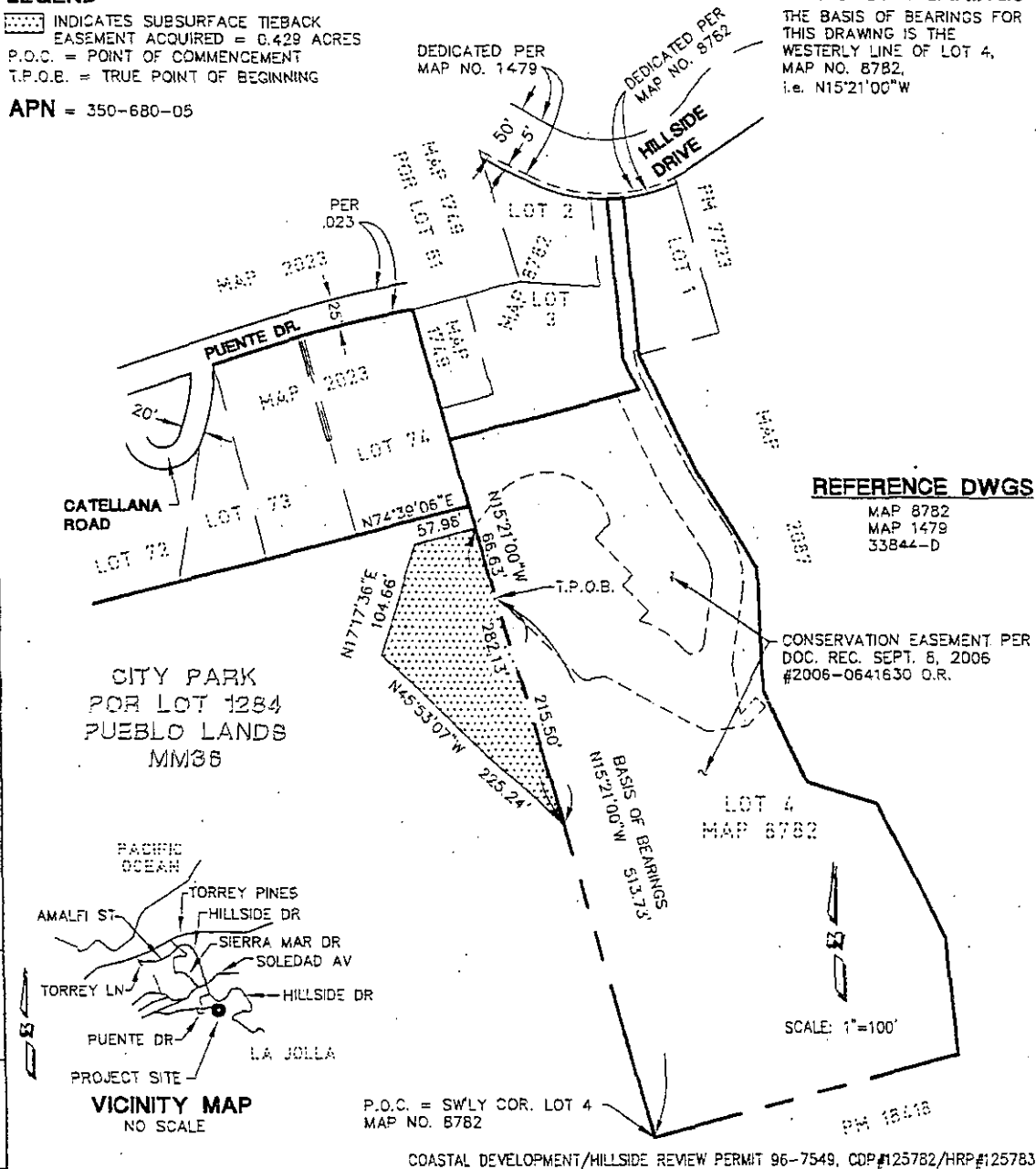
LEGEND

INDICATES SUBSURFACE TIEBACK
EASEMENT ACQUIRED = 0.429 ACRES
P.O.C. = POINT OF COMMENCEMENT
T.P.O.B. = TRUE POINT OF BEGINNING

APN = 350-680-05

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR
THIS DRAWING IS THE
WESTERLY LINE OF LOT 4,
MAP NO. 8782,
i.e. N15°21'00"W



REFERENCE DWGS

MAP 8782
MAP 1479
33844-D

CONSERVATION EASEMENT PER
DOC. REC. SEPT. 5, 2006
#2006-0641630 O.R.

SCALE: 1"=100'

P.O.C. = SW'LY COR. LOT 4
MAP NO. 8782

COASTAL DEVELOPMENT/HILLSIDE REVIEW PERMIT 96-7549, COP#125782/HRP#125783

LAND SURVEYOR OF WORK:

DATE

MARY M. ACOSTA, PLS 6664
LIC EXPIRE DATE: JUNE 30, 2008

P S O M A S

4455 Murphy Canyon Road, Suite 200
San Diego, CA 92123
(858)576-9200 Fax (858)565-1738

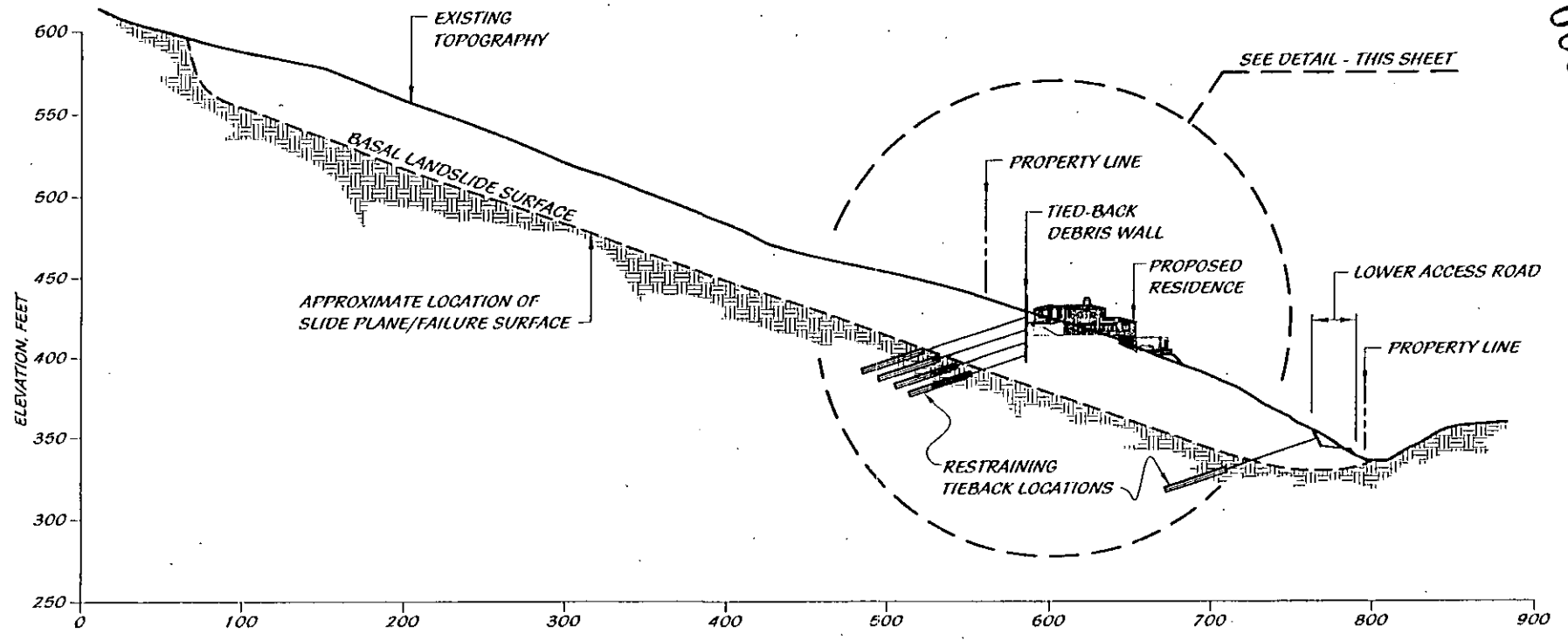
SUBSURFACE TIEBACK EASEMENT

IN CITY PARK

LOT 1284 PUEBLO LANDS MISC MAP 35

DESCRIPTION	BY	APPROVED	DATE	FILED	CITY OF SAN DIEGO, CALIFORNIA ENGINEERING DEPARTMENT SHEET 1 OF 1 SHEETS	PTS. NO.
ORIGINAL						J.O. NO.
					FOR CITY ENGINEER	1886-6249 CCS 83
					DATE	246-1689 LANDSBY COORDINATES
						-B
STATUS						

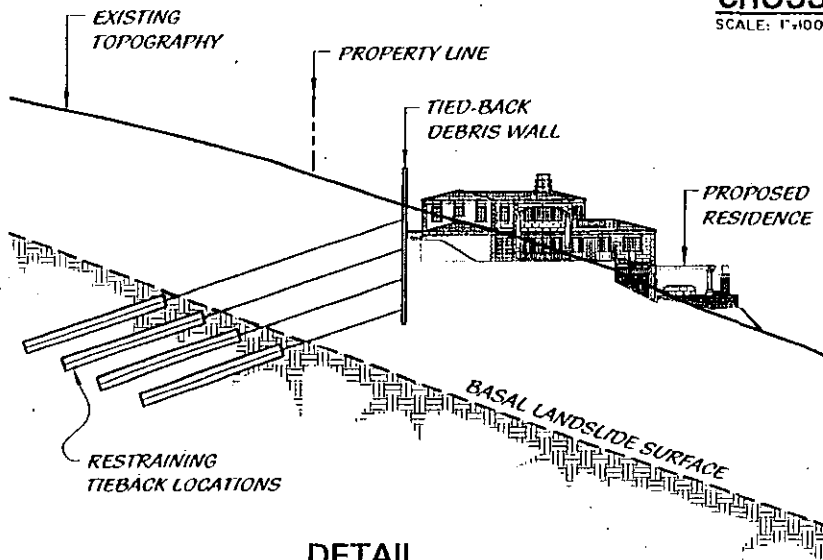
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CROSS SECTION

SCALE: 1"=100' (HORIZ. & VERT.)

1
FIG 1



DETAIL

SCALE: 1"=50' (HORIZ. & VERT.)



TERRACOSTA CONSULTING GROUP
ENGINEERS AND GEOLOGISTS
4455 MURPHY CANYON ROAD, SUITE 100
SAN DIEGO, CA 92123 (619) 673-6900

PROJECT NAME
LOT 4, LA JOLLA HILLSIDE
7674 HILLSIDE DRIVE

FIGURE NUMBER

2

PROJECT NUMBER

2257

DEBRIS WALL DETAIL

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Recording requested by:

The City Of San Diego
 Development Services Department
 Permit Intake, Mail Station 501

When recorded deliver to:
 San Diego City Clerk
 Mail Station 2a

CDP NO. 125782/HRB NO. 125783

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT ("Grant") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("GRANTOR"), and COUNTRY CLUB DRIVE, LLC, a Nevada limited liability company ("GRANTEE"), to be effective when executed by the parties and approved by the San Diego City Attorney, and as of the date of its recordation in the Office of the San Diego County (California) Recorder (the "Effective Date"), as follows:

RECITALS

- A. GRANTOR owns that certain real property (APN 352-680-05, the "GRANTOR Property") located in the City of San Diego, commonly known as "La Jolla Natural Park" and more particularly described in **Exhibit A: Description of GRANTOR Property**, attached hereto.
- B. GRANTEE owns that certain real property (APN 352-130-15, the "GRANTEE Property") located at 7674 Hillside Drive, La Jolla, California, immediately adjacent to the westernmost boundary of GRANTOR Property's, and more particularly described in **Exhibit B: Description of GRANTEE Property**, attached hereto.
- C. Pursuant to Coastal Development Permit No. 125782 and Hillside Review Permit No. 125783, and approved by San Diego City Council Resolution Number R-299734, adopted on October 5, 2004 (the "Council Resolution"), GRANTEE intends to develop a single-family residence ("Residence") on the GRANTEE Property.
- D. In connection with GRANTEE'S proposed development, and in accordance with the Council Resolution, GRANTEE wishes to excavate and construct a tie-back shoring system under and within the GRANTOR Property (the "Tie-Back," as more fully described in **Exhibit C: Tie-Back System Plan**, attached hereto) with metal tie-back anchors to stabilize both the GRANTEE Property and the GRANTOR Property.
- E. Under the terms and conditions of this Grant, GRANTOR will grant to GRANTEE a nonexclusive subsurface easement (the "Easement") under and within a portion of the GRANTOR Property (the "Easement Area," as described and depicted in **Exhibit D:**

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Description of Easement Area, attached hereto) for the sole purpose of installing, maintaining, repairing, replacing, and removing the Tie-Back, and for no other purpose whatsoever.

- F. The fair market value of the Easement has been determined to be Two Thousand Five Hundred Dollars (\$2,500) by appraisal made by the Valuation Division of GRANTOR'S Real Estate Assets Department, dated May 31, 2007.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, GRANTOR and GRANTEE agree as follows:

1. Grant. GRANTOR hereby grants to GRANTEE a nonexclusive subsurface easement (the "Easement") in and to the Easement Area, provided the Easement Area is continuously used solely for the purpose of installing, maintaining, repairing, replacing, and removing the Tie-Back and any necessary related facilities, and restoring the GRANTOR Property as required by this Grant, and for no other use whatsoever. GRANTOR expressly reserves for itself, its successors and its assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights granted herein. The use of the word "grant" shall not imply any warranty on the part of GRANTOR with respect to the Easement or the Easement Area.
2. Right of Entry. GRANTOR hereby grants to GRANTEE a right of entry upon the GRANTOR Property solely for the purpose of accessing the Easement Area to effect the installation, maintenance, repair, replacement, and removal of the Tie-Back and any necessary related facilities, and the restoration of the GRANTOR Property as required by this Grant, and only to the extent necessary for such purposes, and for no other purpose whatsoever.
3. Processing Fee. GRANTEE shall pay to GRANTOR an easement processing fee of One Thousand Five Hundred Ninety Dollars (\$1,590) on or before the Effective Date.
4. Easement Fee. GRANTEE shall pay to GRANTOR an easement fee of Two Thousand Five Hundred Dollars (\$2,500) on or before the Effective Date.
5. Default. GRANTEE shall be in default of this Grant if GRANTEE breaches any of its obligations under this Grant and fails to cure the breach within thirty (30) days following written notice thereof from GRANTOR, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion within a period of time set by GRANTOR in its sole discretion in each instance.
6. Termination. GRANTOR may terminate the Easement and this Grant at any time: (a) after twelve (12) months of continuous non-use of the Easement or the Easement Area by GRANTEE; or (b) upon GRANTEE'S default of this Grant.
 - 6.1. Quitclaim. Upon such termination or the expiration of the Easement, GRANTEE shall deliver to GRANTOR a recordable quitclaim deed in form and content satisfactory to

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GRANTOR granting to GRANTOR any and all interest GRANTEE may have in and to the GRANTOR Property and the Easement.

- 6.2. No Liability. GRANTOR shall not be obligated for any loss, financial or otherwise, which GRANTEE may incur as a result of the termination of the Easement. GRANTEE expressly waives any claim against GRANTOR for expense or loss which GRANTEE might incur as a result of the termination of the Easement.
7. Restoration. Upon the termination of the Easement after twelve (12) months of continuous non-use of the Easement or the Easement Area by GRANTEE, and upon GRANTOR'S demand, GRANTEE shall promptly remove any and all improvements it installed in, on, under, or above the Easement Area and restore the Easement Area to its original condition, all at GRANTEE'S sole cost and expense.
8. Superior Interests. The Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the GRANTOR Property, whether or not of record. GRANTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Easement Area, relative to any such superior interest.
- 8.1. Accommodation. If GRANTEE'S use of the Easement Area is or becomes inconsistent or incompatible with a preexisting, superior interest, GRANTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 8.2. Conflicting Repairs: Notice. Except in the case of an emergency, if any facilities on, in, or under the GRANTOR Property is to be repaired, replaced, or relocated, and such work may adversely affect the integrity or operation of GRANTEE'S use of the Easement, GRANTOR shall notify GRANTEE in writing at least thirty (30) days prior to commencement of the work. Such notice shall state the scope and expected duration of such work.
9. Governmental Approvals. By entering into this Grant, neither GRANTOR nor GRANTOR'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Easement or GRANTEE'S use of the Easement Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the GRANTEE'S use of the Easement Area.
10. Hazardous Substances. GRANTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Easement Area or the GRANTOR Property. GRANTEE and GRANTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Easement Area or the GRANTOR Property without GRANTOR'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying,

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 disposing, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Grant.

- 10.1. Remediation. If GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area results in a release of a hazardous substance, GRANTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 10.2. Indemnity. GRANTEE shall protect, defend, indemnify, and hold GRANTOR harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 10.3. Notice of Release. If GRANTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Easement Area or the GRANTOR Property, GRANTEE shall immediately notify GRANTOR and deliver a written report thereof to GRANTOR within three (3) days of receipt of the knowledge or cause for belief. If GRANTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, GRANTEE shall take all actions necessary to alleviate the danger. GRANTEE shall notify GRANTOR immediately of any notice of violation received or initiation of environmental actions or private suits related to the Easement Area or the GRANTOR Property.
- 10.4. Environmental Assessment. Upon reasonable cause to believe that GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area or the GRANTOR Property ("GRANTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Easement Area or the GRANTOR Property, GRANTOR may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at GRANTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by GRANTEE'S Operations on, in, or under the Easement Area or the GRANTOR Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal.

necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. GRANTEE shall cause, or if GRANTEE fails to do so within a reasonable period of time, GRANTOR may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and GRANTEE shall pay all costs and expenses therefor.

11. Noninterference. GRANTEE shall not materially interfere with GRANTOR'S use, operations, and activities on the GRANTOR Property, and GRANTEE shall use such routes and follow such procedures on the GRANTOR Property as shall result in the least damage and inconvenience to GRANTOR.
12. Property Damage. GRANTEE shall pay for all damage to the GRANTOR Property, GRANTOR'S personal property on the GRANTOR Property, and the personal property of third parties on the GRANTOR Property resulting from GRANTEE'S exercise of the rights granted by this Grant, including without limitation soil erosion, subsidence, or damage resulting thereby. GRANTEE shall promptly repair and restore to its original condition all such property.
13. Indemnification. GRANTEE shall protect, defend, indemnify, and hold GRANTOR, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to GRANTEE'S officers, employees, agents, contractor's, students, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Grant or GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area or the GRANTOR Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that GRANTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of GRANTOR, its elected officials, officers, representatives, agents and employees. GRANTOR may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If GRANTOR chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, GRANTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
14. Taxes. GRANTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against GRANTEE'S interest in the Easement Area, or against any of the GRANTOR Property as a result of the Easement granted hereby.
15. Encumbrances. GRANTEE shall keep the GRANTOR Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Grant or GRANTEE'S use of the Easement Area. GRANTEE shall protect, defend, indemnify, and hold GRANTOR harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense,

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including without limitation all attorney fees and costs, relating to or charged against the GRANTOR Property, including without limitation GRANTEE'S failure or the failure of any contractor or subcontractor hired by GRANTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

16. No Discrimination. GRANTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in GRANTEE'S use of the Easement Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
17. GRANTEE'S Risk. GRANTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with GRANTEE'S use of the Easement Area and any damages to the improvements on, under, or in the vicinity of the Easement Area resulting directly or indirectly thereby.
18. Insurance. On or before the Effective Date, GRANTEE shall deliver to GRANTOR a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000).
 - 18.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - 18.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by GRANTOR. The policies shall be kept in force for the duration of the Easement and any extended use. The certificate(s) of insurance shall be filed with GRANTOR'S Park and Recreation Department and/or Real Estate Assets Department upon execution of this Grant.
 - 18.3. Qualified Insurer(s). All insurance required by the terms of this Grant must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to GRANTOR. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet GRANTOR'S requirements.
 - 18.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of GRANTEE and must be disclosed and acceptable to GRANTOR at the time evidence of insurance is provided.
 - 18.5. Continuity of Coverage. All policies shall be in effect on or before the Effective Date, except "course of construction fire insurance" shall be in force on

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commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, GRANTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Grant.

- 18.6. Modification. To assure protection from and against the kind and extent of risk existing on the Easement Area, GRANTOR, at its discretion, may require the revision of amounts and coverage at any time by giving GRANTEE thirty (30) days prior written notice. GRANTEE shall also obtain any additional insurance required by GRANTOR for new improvements, in order to meet the requirements of this Grant.
- 18.7. Accident Reports. GRANTEE shall report to GRANTOR any accident causing property damage or injury to persons on the Easement Area or the GRANTOR Property and related to GRANTEE'S use of the Easement Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 18.8. Failure to Comply. Notwithstanding any other provision of this Grant, if GRANTEE fails or refuses to obtain or maintain insurance as required by this Grant, or fails to provide proof of insurance, GRANTOR may terminate this Grant and the Easement immediately upon such breach.
19. Compliance with Law. GRANTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Easement Area and GRANTEE'S Operations on the Easement Area.
20. No Assignment. GRANTEE shall not assign any rights granted by this Grant or any interest herein without GRANTOR'S prior written consent, which consent may not be unreasonably withheld.
21. Maintenance of the Tie-Back and Easement Area. GRANTEE shall maintain the Tie-Back and the Easement Area, at GRANTEE'S sole cost and expense and to GRANTOR'S satisfaction, in a safe and stable condition.
22. Inspection. GRANTOR may, at any and all times, enter and inspect the Easement Area.
23. Waiver. GRANTOR'S failure to insist upon the strict performance of any of GRANTEE'S obligations under this Grant, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Easement Area is publicly-owned and held in trust for the benefit of GRANTOR'S citizens. GRANTOR'S failure to discover a breach of any obligation of this Grant or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but GRANTOR may at any and all times require the cure of any such

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breach.

24. Survival. Any obligation which accrues under this Grant prior to its expiration or termination shall survive such expiration or termination.
25. Entire Agreement. This Grant contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Grant shall be valid unless in writing and signed by the party to be charged.
26. Successors and Assigns. This Grant shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.
27. Legal Proceedings. In the event of any controversy, claim, or dispute relating to the Easement or this Grant, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.
28. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Grant shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

GRANTOR: THE CITY OF SAN DIEGO
 Attention: Park and Recreation Department Director
 1200 Third Avenue, Suite 1300 MS56C
 San Diego, California 92101
 Re: Hillside Tie-Back

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY
 Attention: Real Property Section
 1200 Third Avenue, Suite 1100
 San Diego, California 92101-4106

GRANTEE: COUNTRY CLUB DRIVE, LLC
 Attention: _____
 PO Box 279
 San Marcos, CA 92079
 Re: Hillside Tie-Back

29. Authority. Each individual executing this Grant on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Grant on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Grant is binding upon such person or entity in accordance with its terms. Each person executing this Grant on

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behalf of another person or legal entity shall provide GRANTOR with evidence, satisfactory to GRANTOR, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Grant is executed to be effective as of the Effective Date.

GRANTEE: COUNTRY CLUB DRIVE, LLC, a Nevada limited liability company

BY: _____
 Name: _____
 Title: _____

GRANTOR: THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
 Name: _____
 Title: _____

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

Date: _____ BY: _____
 Name: _____
 Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____ MICHAEL J. AGUIRRE, City Attorney

BY: _____
 Name: _____
 Title: _____

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000270
CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
 COUNTY OF _____)

On _____ before me, _____, a notary public in
 and for said County and State, personally appeared _____
 personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
 whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
 executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
 the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the
 instrument.

WITNESS my hand and official seal:

 (Signature of Notary Public)

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
 COUNTY OF _____)

On _____ before me, _____, a notary public in
 and for said County and State, personally appeared _____
 personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
 whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
 executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
 the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the
 instrument.

WITNESS my hand and official seal:

 (Signature of Notary Public)

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ATTACHMENT 7

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Exhibit A: Description of GRANTOR Property

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Exhibit B: Description of GRANTEE Property

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ATTACHMENT 7

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Exhibit C: Tie-Back System Plan

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Exhibit D: Description of Easement Area

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000275 REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUM (FOR AUDITOR'S U) 334 7/17	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Development Services	
3. DATE: 6/6/2007			
4. SUBJECT: Hillside Drive Residence – Easement Agreement, Project No. 87275			
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Glenn Gargas 446-5142, M.S. 501		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Robert Korch, 446-5229, M.S. 501	
		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES			
FUND	41300		
DEPT.	1317		
ORGANIZATION	1711		
OBJECT ACCOUNT	4926		
JOB ORDER	42-5480		
C.I.P. NUMBER			
AMOUNT			
9. ADDITIONAL INFORMATION / ESTIMATED COST:			
10. ROUTING AND APPROVALS			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	MARCELA ESCOBAR-ECK	
2	DSD/EAS	ALLISON SHERWOOD	6/14/07
3	Parks & Rec	Stacy Lommedico	6/25/07
4	CFO		
5	FM	Melanie Hakamian	6/29/07
6	Liaison		6/27/07 ✓
7			
8	DEPUTY CHIEF	JIM WARING	6/15/07
9	COO		
10	CITY ATTORNEY	BROCK LADEWIG	7/5/07
11	ORIG. DEPT	MIKE WESTLAKE	6/14/07
DOCKET COORD: _____ COUNCIL LIAISON: _____ COUNCIL PRESIDENT <input checked="" type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION REFER TO: _____ COUNCIL DATE: 7/17/07			
11. PREPARATION OF: <input type="checkbox"/> RESOLUTIONS <input type="checkbox"/> ORDINANCE(S) <input checked="" type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S) Grant of Easement and Agreement, Project No. 87275 STATING FOR THE RECORD THAT THE FINAL MITIGATED NEGATIVE DECLARATION NO. 96-7549 HAS BEEN REVIEWED AND CONSIDERED PRIOR TO APPROVING THE PROJECT.			
11a. staff RECOMMENDATIONS: APPROVE the Easement Agreement No. 87275 for the installation, maintenance and repair of the proposed tieback anchor system associated with the development of the Hillside Drive Residence.			
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) COUNCIL DISTRICT(S): ONE COMMUNITY AREA(S): LA JOLLA ENVIRONMENTAL IMPACT: THE CITY OF SAN DIEGO AS LEAD AGENCY UNDER CEQA HAS REVIEWED AND CONSIDERED A MITIGATED NEGATIVE DECLARATION NO. 96-7549, DATED JANUARY 23, 1999, COVERING THIS ACTIVITY. ADOPTED JUNE 29, 1999, BY RESOLUTION NO. R-291885. HOUSING IMPACT: NONE OTHER ISSUES: PROPOSED EASEMENT ENCROACHES INTO DEDICATED CITY PARK LAND CITY CLERK INSTRUCTIONS: NO PUBLIC NOTICE IS REQUIRED			

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EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: July 11, 2007 REPORT NO.: 07-118
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Development Services Department
SUBJECT: Hillside Drive Residence – Easement Agreement
Project Number 87275
COUNCIL DISTRICT(S): One
STAFF CONTACT: Glenn Gargas, (619) 446-5142, ggargas@sandiego.gov

REQUESTED ACTION: Approval of an Easement Agreement for the installation, maintenance and repair of proposed Tieback anchor system associated with the development of the Hillside Drive Residence, located at 7674 Hillside Drive, within the La Jolla Community Planning Area.

STAFF RECOMMENDATION: APPROVE Easement Agreement No. 87275 for the installation, maintenance and repair of the proposed Tieback anchor system associated with the development of the Hillside Drive Residence.

EXECUTIVE SUMMARY: This is a request for approval of an Easement Agreement for the installation, maintenance and repair of a proposed tie back anchor system for the foundation of a single-family residence, with a portion of the tie back anchor system to be located within adjacent dedicated City Park Land. This single-family home was previously approved by City Council through Coastal Development Permit and Hillside Review Permit, Project No. 37375.

The subject tiebacks would be drilled in a manner so that no visual or functional aspect of the city's property would be disrupted. All of the entry holes for drilling for the tiebacks will occur or originate within the building footprint of the proposed house. Those tiebacks would be between 20-60 feet underground at the beginning of the encroachment on City land. The tiebacks would be undetectable above ground and will not create a negative visual or functional impact on the City Park Land during or subsequent to construction.

If this request for an Easement Agreement is denied by City Council, then the applicant/property owner would have to develop their property by utilizing a caisson foundation system.

FISCAL CONSIDERATIONS: All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

The fair market value for the Easement as determined by Real Estates Assets Department is \$2,500 to be paid by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: The Coastal Development Permit and Hillside Review Permit, Project No. 37375, was approved on appeal by City Council on October 5, 2004, by Resolution No. 299734.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: On April 8, 1999, the Planning Commission denied an appeal and approved the subject project by a

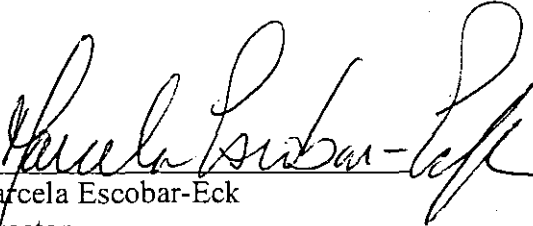
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vote of 6 to 0, with one additional condition. A condition requiring the applicant to enter into a Hold Harmless Agreement with the City was added to the permit due to potential geologic hazards of the site.

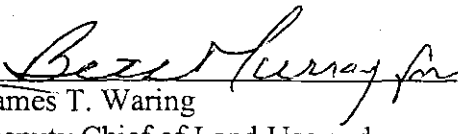
The La Jolla Community Planning Association voted 10-0-0 to recommend approval of the proposed project at their meeting of July 10, 1997.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Matthew C. DiNofia, Managing Partner of La Jolla Development Group LLC



Marcela Escobar-Eck
Director
Development Services Department



James T. Waring
Deputy Chief of Land Use and
Economic Development

ATTACHMENTS: Report to the City Council

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RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

AUTHORIZING THE MAYOR TO EXECUTE A GRANT OF EASEMENT AND AGREEMENT FOR A NONEXCLUSIVE SUBSURFACE EASEMENT FOR A TIE-BACK ANCHOR SYSTEM BENEATH LA JOLLA NATURAL PARK ADJACENT TO 7674 HILLSIDE DRIVE IN LA JOLLA; PROJECT NO. 87275.

WHEREAS, a nonexclusive, subsurface easement [Easement] for the installation, maintenance, and repair of a tie-back anchor system has been requested for the development of a single-family residence [Residence], located at 7674 Hillside Drive, in La Jolla; and

WHEREAS, the development of the Residence was previously approved on appeal by the City Council on October 4, 2004, by Resolution No. 299734 (Coastal Development Permit and Hillside Review Permit, Project No. 37375); and

WHEREAS, a portion of the tie-back anchor system will be located beneath the La Jolla Natural Park; and

WHEREAS, the subject tie-backs will not visually or functionally impair the City's property; and

WHEREAS, all costs associated with the processing of this project are paid from a deposit account maintained by the applicant; and

WHEREAS, a Geotechnical Report related to the project found that both a tie-back system and a caisson system would meet geologic requirements; however, the caisson system is more expensive and the tie-back system is considered a superior construction method; and

WHEREAS, the tie-back system is believed to offer some benefit to the City by stabilizing a portion of unstable slope located on City property; and

WHEREAS, the fair market value of the Easement is Two Thousand Five Hundred Dollars (\$2,500), as determined by an appraisal performed by the Valuation Division of the City's Real Estate Assets Department on May 31, 2007; and

WHEREAS, the grant of easement will include a hold-harmless and indemnification agreement as required by the City's Planning Commission; NOW, THEREFORE,

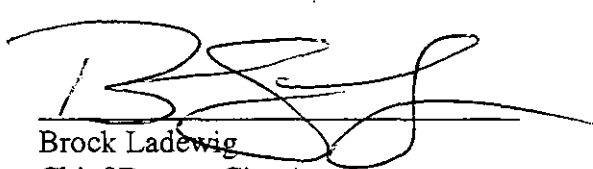
BE IT RESOLVED, by the City Council of the City of San Diego that the granting of a nonexclusive, subsurface easement [Easement] to COUNTRY CLUB DRIVE, LLC, a Nevada limited liability company [CCD], for the installation, maintenance, and repair of a tie-back anchor system beneath the La Jolla Natural Park is approved; and

BE IT FURTHER RESOLVED, the Mayor or his designee is authorized and empowered to execute and deliver a GRANT OF EASEMENT AND AGREEMENT by and between the City and CCD, a copy of which is filed in the Office of the City Clerk as Document No.

_____ ; and

BE IT FURTHER RESOLVED, the Auditor and Comptroller is authorized to accept an easement fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) for the grant of the Easement, and deposit said fee into Fund 302453, Capital Outlay Fund, Revenue Account 78335.

By


Brock Ladewig
Chief Deputy City Attorney

BL:bas
06/22/07
Or.Dept:DSD

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(R-2007-1285)

R-2007-1285
MMS #4993

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor